

# What You Need to Know as a Party to a Qualified Domestic Relations Order

This booklet is intended for use by members of the Worcester Retirement System (WRS), their spouses and attorneys. It is designed to give you the information you need to effectively structure a property settlement to divide pension benefits under Massachusetts General Law's chapter 32.

This booklet is not intended as a substitute for the Massachusetts General Laws nor will its interpretation prevail should a conflict arise between its contents and M.G.L. c. 32. Rules governing retirement benefits are subject to change periodically either by regulation of the Internal Revenue Service or by statute Of the Massachusetts Legislature. If you have any questions about this material, please contact our office or *seek legal advice from your attorney or financial advisor.*

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## Divorce and your retirement benefits

### **1** How are my retirement benefits an issue in my divorce?

Your pension from the Worcester Retirement System (WRS) is generally considered a marital asset and, whether you are currently receiving a retirement allowance or are still actively in service, it may be subject to valuation and division in a divorce.

### **2** What is a domestic relations order?

A domestic relations order—commonly known as a QDRO—is a judgment, decree or order (including approval of a property settlement agreement) that sets out how a person's retirement benefits are to be allocated between parties who are in the process of divorcing or who are already divorced. The QDRO must be reviewed and accepted by the WRS to ensure that it complies with the General Laws and is enforceable. The process of having a QDRO accepted by the WRS involves the following steps:

- 1) The parties submit the QDRO to the WRS Office.
- 2) The Office forwards it for legal review to be sure that it complies with the WRS plan (Massachusetts General Law's chapter 32) and can be implemented. If the QDRO is not acceptable, our attorney will notify, the attorney submitting the QDRO those revisions needed once approved the QDRO must be signed by the court.

3) The WRS files the order in the member's file and notes the order on our computer system. We strongly recommend that both parties keep a copy of the order for their own files.

QDROs deal primarily with retirement benefits. Because a pension is an asset that becomes payable at some future date, and involves many "unknowns," it is necessary to address how it will be divided in a very specific document. This document usually gives to an alternate payee the right to receive part of the benefits that would be payable to a participant under the plan. The QDRO may not alter the amount or form of the benefits of the plan.

### **3 As a member of the Worcester Retirement System (WRS) who is now receiving or will be entitled to receive a retirement allowance, do I need to have a Qualified Domestic Relations Order as part of my divorce?**

Not necessarily. Depending on your particular financial situation, you may be able to address the division of your WRS pension in another way, such as calculating the present value of your benefits and then apportioning it along with your other assets. However, this is an issue for you to discuss with your attorney.

### **4 Can the WRS determine the present value of my future retirement benefits?**

No. We can only give information regarding current account balances. For computation of the present value of the member's benefits, you will need to consult an actuary or other financial professional. The WRS can provide the information that an actuary will need to assign value to your retirement allowance.

### **5 Can a court order the Worcester Retirement Board to divide current or future benefits by issuing separate checks, part to the member and part to an alternate payee?**

Yes. Pursuant to M.G.L. c. 32, §19, payments from the WRS fund may be made to another person (known as an *alternate payee*) who is expressly provided for in the terms of any Qualified Domestic Relations Order or court decree.

### **6 May benefit rights be assigned or attached to satisfy a support obligation?**

In certain cases, yes. The rights of WRS members are normally exempt from execution, garnishment or other process unless a support order has been issued under M.G.L. cc. 208, 209, 209A, 209C, 209D or 273. Benefit rights may be assigned or attached in connection with child support orders or alimony.

### **7 Are the payments made by the WRS subject to either the Retirement Equity Act or the Employment Retirement Income Security Act (ERISA)?**

No. Public and government plans are specifically exempt from the provisions of both those federal acts.

## **8 Can anyone other than the member require the WRS to disclose information contained in that member’s file, such as a beneficiary designation or the account balance?**

Under the general public records law, we may not disclose to other parties the information in a member’s file unless:

- we have a release, signed by the member, on file (we will need a release from you in order to share information with your attorney); *or*
- the information has been subpoenaed, we have notified the member of the request and given him or her the opportunity to quash the subpoena, and the subpoena has not been quashed.

## **9 Can a representative of the WRS be called upon to testify in court?**

Yes—however, most—if not all—of the information you need to compose a Qualified Domestic Relations Order can be communicated by written documentation, which we will gladly provide.

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## **What you need to know as a retiree**

### **10 I am a retiree who is getting divorced. In what way can a Qualified Domestic Relations Order affect my retirement allowance?**

Your retirement allowance may be apportioned, but neither the total amount nor the option you selected at the time of your retirement may be changed. If applicable, we will divide your monthly allowance according to the terms of the Court’s order or the parties’ agreement.

### **11 From the WRS’s perspective, what issues do I need to address in structuring a Qualified Domestic Relations Order?**

If we are currently paying you a retirement allowance, you need to be sure to address the percentage or amount of your retirement allowance that is to be made payable to the alternate payee. Please also refer to Appendix A for an overview of the issues you need to address.

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## **What you need to know as an active member**

### **12 According to the Internal Revenue Code, what type of plan is the Worcester Retirement System plan?**

The WRS is a defined benefit plan that operates as a qualified employer plan under section 401(a) of the Internal Revenue Code.

## 13 When am I eligible to receive a retirement allowance?

You are eligible to receive a retirement allowance when you:

- have 20 years of creditable service, regardless of your age, *or*
- are at least age 55 *and* you became a member of the WRS on or after January 1, 1978 *and* you have at least 10 years of creditable service.

If, however, you do not meet either of these requirements and you were a member of the WRS prior to January 1, 1978, different eligibility requirements may apply to you. Please contact the WRS for additional information.

## 14 Instead of receiving a retirement allowance, can I receive a refund of my contributions and interest?

Yes—you may receive a refund if you have officially resigned from your position and will not be re-employed in a position.

By receiving a refund of your contributions, you terminate your contractual rights with the retirement plan and give up your right to a retirement allowance. Consequently, if you return to active service in a position requiring membership in a contributory retirement system, you may be subject to a new contribution rate.

## 15 What is my annuity savings account?

As a member of the Worcester Retirement System, you have an annuity savings account that is maintained on your behalf by the WRS for your retirement. Your account consists of two parts:

- **contributions**, which are deducted from your paycheck by the Treasurer and
- **interest**, which is earned on your balance and credited at a rate determined by the Public Employee Retirement Administration Commission (PERAC).

Additionally, if you have purchased creditable service, your payments will be included in your annuity savings account balance.

## 16 How do I know how much money I have in my annuity savings account?

Every year, the WRS sends a statement of account to all active and inactive members who have a balance in their annuity savings account.

Please note that the balance of your annuity savings account does not equal the “value” of your retirement allowance. For that, you will have to consult an actuary.

## 17 What is the difference between after-tax contributions and pre-tax contributions?

The difference is that you have already paid taxes on your after-tax contributions—and, therefore, you do not have to pay taxes on them again when you receive them in the form of a lump-sum payment—but you have not yet paid taxes on your pre-tax contributions and, so, you will have to pay taxes on those when you receive them.

## 18 How do I know what amount is nontaxable and what is taxable?

For tax purposes, the WRS identifies the balance in your annuity savings account (the total of your contributions and interest) according to the nontaxable and taxable portions:

- **Nontaxable portion:** The nontaxable portion of your balance is equal to your contributions, if any, made prior to January 1, 1988, plus any payments you made to “buy back” previous creditable service. This is also known as your “after-tax” portion because these contributions were deducted from your paycheck after taxes had already been taken out of the entire amount of your paycheck. Because you have already paid taxes on this portion (as well as any payments you made to purchase creditable service), you will not have to pay taxes on this amount again. After-tax contributions may be rolled over from a qualified plan only to another qualified defined contribution plan or into a traditional IRA.
- **Taxable portion:** The taxable portion of your balance is equal to your contributions made on or after January 1, 1988, plus any interest you receive on your account. After January 1, 1988, all contributions were deducted from your paycheck before taxes were taken out. Since you have not yet paid taxes on this portion, it is taxable when you receive it in the form of a lump-sum payment or, if you rollover this portion into another retirement plan, when you eventually receive these funds.

## 19 Is the interest on my account considered a pre-tax or an after-tax amount?

All interest is paid on a pre-tax basis; as such, all interest is included in the taxable portion of your annuity savings account balance, which you may need to reference in the event you take a refund of your account.

## 20 I am an ACTIVE member of the WRS. Do I have any use of the funds in my annuity savings account?

No. Your annuity savings account is not a personal bank account or an individual retirement account. As someone who is currently contributing to the Worcester Retirement System through regular payroll deductions or who is on an authorized leave of absence, you are not eligible to withdraw any portion of your annuity savings account balance. Likewise, you may not borrow money from your account or assign your account, nor may your account be attached by a lien, except by the Internal Revenue Service or the Massachusetts Department of Revenue. The funds must remain in your account with the WRS until you retire, die or become an inactive member who is eligible to receive a refund of the money.

## **21** I am an **INACTIVE** member of the **WRS**. Am I eligible to receive a refund of the money in my annuity savings account?

You can receive a refund of your annuity savings account after you terminate all Massachusetts public service but before you apply for a retirement allowance. A refund is paid in lieu of any retirement allowance for which you may be eligible. To receive a refund, you must apply to the WRS.

**Note:** A refund may be subject to a lien for unpaid child support payments.

You are *not* eligible to withdraw the balance in your account if you are:

- receiving Workers' Compensation payments either on a weekly basis or, in the case of a lump-sum settlement, during the period of time over which the lump-sum settlement is allocated,
- on a paid or unpaid leave of absence or
- accepting employment with a public school system or any other political subdivision which requires membership in a Massachusetts contributory retirement system.

## **22** Can I withdraw only a portion of the total in my annuity savings account?

No, we cannot give you a partial refund. We must close out your annuity savings account and pay out the entire balance.

## **23** Based on the requirements described in Questions 14 and 21 I have determined that I am eligible to withdraw my money from my annuity savings account. However, I do not want to withdraw my money at this time. Can I just leave the funds in my account with the WRS?

Yes, you may leave the money in your WRS annuity savings account. The WRS will keep your funds on account and continue to send you annual statements which show your balance and any activity, such as addition of interest.

**Although your statement will reflect additional interest each year, you will be eligible to receive interest on your account for only two years following the date of your resignation or termination if you apply for a refund at a later date.**

If, however, you do not take a refund but later return to a position which requires membership in a Massachusetts contributory retirement system, **all** interest reported on your statements will be credited.

Taxes are not assessed on this money until your annuity savings account funds are paid to you in a refund or retirement allowance, or paid to someone else as a result of your death.

## **24** I am an alternate payee who is interested in receiving a lump-sum payment. **What are my options for receiving a lump-sum payment?**

If you are an alternate payee, your rights are dependent on the member. Therefore, you may receive a lump-sum payment only if the member has applied for a refund.

### **Is my lump-sum payment subject to any “early withdrawal penalty” based on my age?**

No. Only a member who withdraws his or her funds may be subject to the 10% early withdrawal penalty. As a nonmember who receives this money, you are not subject to this penalty.

### **Is my lump-sum payment entitled to any special tax treatment?**

We advise you to contact the IRS or a tax expert to answer this question based on your particular circumstances.

# Appendix A

## Overview of issues to address in a QDRO

When drafting a QDRO, you must account for the amount payable as well as various contingencies. Below is a chart of the issues you need to address in your document depending on the member's status at the time of divorce.

Member's status at time of divorce

ISSUE	ACTIVE	RETIREE
Retirement allowance	The amount of the member's pension is calculated according to the type of retirement option the member chooses at the time of retirement. Specify which retirement option the member must choose (Option A, B, or C).	The amount of the retiree's benefit is already known; the retiree cannot change his or her option selection after he or she has already retired.
How the member's retirement allowance will be divided	Most people use percentages to specify the allocation to be paid to the alternate payee and member. Additionally, specify the dates to be used to determine the alternate payee's allocation (i.e., for the purposes of determining the alternate payee's allocation, the member's creditable service will be from the date of the parties' marriage to the date of their divorce).	Using percentages specify the allocations to be paid to the alternate payee and member.
In the event of the member's death	Specify who must be designated as the member's beneficiary and that the member must execute the WRS'S form to designate his or her beneficiary. Additionally, specify the type (lump-sum or member-survivor) of beneficiary. A lump-sum beneficiary will receive the balance in the member's annuity savings account at the time of death. A member-survivor beneficiary will receive a monthly payment.	What happens as far as the member's pension has already been determined by the retirement option selected. If the member has retired under Option: A There will be no beneficiary. B Specify who the member must designate as the lump-sum beneficiary to receive the balance, if any, remaining in the member's annuity savings account. C The original member-survivor Beneficiary designation cannot be Changed.
In the event the member receives a disability or termination allowance, or a refund	<i>See How the member's retirement allowance will be divided, above</i>	These issues do not apply once the member's pension has already been determined.

## Appendix B

### Sample Qualified Domestic Relations Order

For a Qualified Domestic Relations Order regarding a member's WRS benefits to be enforceable, it must be accepted by the WRS. Although you do have some leeway in drafting such an order, remember that we cannot approve an order that does not comply with M.G.L. c. 32. Accordingly, if you wish to include any unusual provisions in your QDRO, it is vital that you first consult with an attorney in our office to be sure that we can accept them.

What follows is a sample domestic relations order for an active member (the plaintiff) who agrees to select Option C at retirement and divide his pension with his former spouse according to a specific percentage. Where appropriate, we have included explanations and comments directly after the text that they relate to. Brackets indicate general variable Information which will be different depending upon your particular case.

**The following is only an example and, except where noted, can be altered. You are not required to use the percentages or amounts reflected in this example. You should consult with an attorney who can draft a DRO appropriate for you.**

COMMONWEALTH OF MASSACHUSETTS  
THE TRIAL COURT  
PROBATE AND FAMILY COURT DEPARTMENT

[Middlesex] Division

Docket No. [00000]

**[John T. Plaintiff],**  
Plaintiff

v.

**DOMESTIC  
RELATIONS ORDER**

**[Mary T. Defendant],**  
Defendant

As a part of the final Judgment in this matter, pursuant to M.G.L. Chapter 208, Section 34, governing the division of marital property between spouses and former spouses in divorce actions, and the decision of the Supreme Judicial Court, *Contributory Retirement Board of Arlington v. Mangiacotti*, 406 Mass. 184 (1989), it is hereby ordered as follows: The opening paragraph contains the standard statutory language, citing the appropriate case law and provisions of Chapter 208. This paragraph should not be altered or amended.

## 1. DEFINITIONS

For the purposes of this Order, the following terms are defined:

- a. *Retirement Plan* shall refer to the Worcester Retirement System (M.G.L. Chapter 32);
- b. *Plan Administrator* shall refer to the Worcester Retirement System, 455 Main Street, Rm 103, Worcester, Massachusetts 01606;
- c. *Participant* shall refer to [John T. Plaintiff, 1 Litigation Drive, Boston, Massachusetts 02111; Social Security number 000-00- 0000; date of birth January 1, 1970];

The Participant is the plan participant whose retirement benefit is the subject of the Order.

- d. *Alternate Payee* shall refer to [Mary T. Defendant, 1 Litigation Drive, Boston, Massachusetts 01111; Social Security number 000-00-0000; date of birth January 1, 1971];

The Alternate Payee is usually the spouse of plan participant who will be receiving a share of the retirement benefit.

- e. *Alternate Payee's Benefit* shall refer to the separate benefit to be established and administered for the Alternate Payee pursuant to paragraph 3 or paragraph 8 of this Order.

## 2. ALLOCATION AND OPTION SELECTION OF PARTICIPANT'S RETIREMENT BENEFIT

The Plan Administrator is advised that the Alternate Payee and the Participant have agreed on allocating the retirement benefit of the Participant under the Retirement Plan which had accrued as of [agreed upon date]. Such benefit shall be reduced to reflect the election of Option C [or Option B in the event of the remarriage of the Alternate Payee if prior to the Participant's actual retirement] pursuant to paragraph 7.

If the Participant and Alternate Payee have agreed on an option choice, it should be stated in this paragraph, along with a date on which to base the division of the benefit. See Appendix D for an explanation of the three available retirement allowance options and how to estimate the amount payable under each one. All three options are available. The option choice, if designated, must remain consistent throughout the Order. If the Order requires that the Participant select Option C, the parties may agree to select an alternative option in the case of remarriage of the Alternate Payee. If the divorce decree awards the Alternate Payee a percentage of the retirement through a particular date, the date should be entered in this paragraph and remain consistent throughout the Order.

## 3. ALTERNATE PAYEE'S RIGHT TO BENEFITS

The Alternate Payee is awarded all right, title and interest in and to the Alternate Payee's Benefit as defined in paragraph 5 of this Order, commencing at the Participant's actual retirement date and continuing while both parties are alive. This is an assignment of the Participant's interest pursuant to M.G.L. c. 32, §19.

This paragraph addresses the rights that will be conferred on the Alternate Payee and when those rights will become effective. This paragraph is written in conformance with M.G.L. c. 32 and should not be altered or amended.

#### **4. PAYMENT OF BENEFITS BY PLAN ADMINISTRATOR**

The Worcester Retirement System shall pay directly to the Alternate Payee the Alternate Payee's Benefit, awarded by this Order, commencing concurrently with the Participant's benefit and continuing until the first death of either the Participant or the Alternate Payee.

Like paragraph 3, this paragraph addresses the rights that will be conferred on the Alternate Payee and when those rights will become effective. This paragraph is written in conformance with M.G.L. c. 32 and should not be altered or amended.

#### **5. DETERMINATION OF ALTERNATE PAYEE'S BENEFIT**

The Alternate Payee's Benefit shall be equal to [XX]% of the marital portion of the Participant's benefit commencing at the time of the Participant's actual retirement. The marital portion of the Participant's benefit is the benefit which the Participant would have received at [his/her] actual retirement date in the absence of this Order, determined using [his/her] highest consecutive three-year average salary at [his/her] actual retirement date and using the benefit percentage specified in the Retirement Plan for the age at which the Participant actually retires and commences receiving [his/her] benefit, but using only [his/her] credited service under the Retirement Plan through [agreed upon date]. Such benefit shall be reduced to reflect the election of Option C pursuant to paragraph 7.

This paragraph allows the parties to designate the percentage to be received by the Alternate Payee as of a specific date. This date should be the same as stated in paragraph 2 and remain consistent throughout the Order. The sample language of the Order uses a common formula in determining the marital portion to be awarded to the Alternate Payee. The parties, however, have the flexibility of establishing their own formula or, if the member is retired, they can simply state a specific dollar amount or percentage to be awarded at the time of divorce. We strongly suggest that if you plan on deviating from the sample formula that you consult the Legal Unit of the WRS to ensure that your particular formula can be implemented in compliance with the Retirement Plan.

If the parties have agreed or the Court has ordered that the benefit be split as of a particular date (usually the date of separation or divorce), this date should be used in relation to any mention of creditable service. Again, this is merely an option—the parties are free to develop any apportionment of the benefit that is consistent with the divorce decree as long as it does not violate the terms of the Retirement Plan. You should also restate the option choice if it has been agreed upon. As in the example above, the formula for determining the "Marital Portion" can be based on factors, such as age and salary that are determined after the date of retirement.

**If, at the time of processing the Participant's application for retirement, the WRS finds that the Participant failed to select the specific court-ordered option, we will stop processing the application and notify all parties.**

#### **6. DETERMINATION OF ALTERNATE PAYEE'S BENEFIT IN EVENT OF PARTICIPANT'S DISABILITY RETIREMENT**

In the event that the Participant receives a disability benefit from the Worcester Retirement Board, due to either accidental or ordinary disability, the Alternate Payee's Benefit shall be equal to [XX]% of the marital portion of the Participant's disability benefit commencing at the time of the Participant's disability retirement. For purposes of ordinary or accidental disability, the marital portion shall mean a fraction, the numerator of which is the Participant's number of years and months of credited service through [agreed upon date], and the denominator of which shall

be the Participant's total number of years and months of service through the date of [his/her] disability. However, for purposes of determining the portion of the accidental disability benefit payable to the Alternate Payee, such fraction shall be applied only to the amount of disability benefit which would have been payable for ordinary disability rather than the actual amount payable for accidental disability; the Participant shall retain 100% of the excess of the amount of the accidental disability benefit over the amount of the benefit which would have been payable for ordinary disability.

Benefit amounts allowed in accidental and ordinary disability cases are calculated differently from regular retirement allowances; accordingly, if the Participant does ultimately retire under a disability allowance, it is necessary to offer an alternative formula to that presented in paragraph 5. The provisions for ordinary and accidental disability benefit allowances are described in detail in Sections 6 and 7 of M.G.L. c. 32.

This paragraph allows the parties to designate how the benefit would be apportioned in the event that the Participant is retired on the basis of either accidental or ordinary disability. While this paragraph is not mandatory, it is helpful in avoiding future complications if the Participant does eventually receive a disability allowance. If no provisions are made for dividing a disability allowance, the Board will not be able to implement the Order and the parties will be required to seek clarification from the Court regarding the division of the allowance.

Again, the formula offered in this sample is a common one, defining the marital portion and awarding a percentage of that portion to the Alternate Payee. Again, this is merely an option—the parties are free to develop any apportionment of the benefit that is consistent with the divorce decree as long as it does not violate the terms of the Retirement Plan.

## **7. PARTICIPANT'S INTENT TO DESIGNATE THE ALTERNATE PAYEE AS HIS OR HER BENEFICIARY OF RETIREE SURVIVOR BENEFITS**

The Participant hereby elects to receive [his/her] retirement benefit under Option C of the Retirement Plan, provided that the Alternate Payee is living and has not remarried at the time of [his/her] retirement. The Participant hereby designates the Alternate Payee as the beneficiary for the death benefit under Option C of the Retirement Plan, provided that the Alternate Payee is living and has not remarried at the time of [his/her] retirement. The Participant is further required to designate the Alternate Payee as the beneficiary on the prescribed form issued by the Worcester Retirement System. In the alternative, in the event the Alternate Payee has become ineligible to receive the Option C survivor benefit by virtue of remarriage prior to the Participant's retirement, the Participant hereby agrees to elect to receive [his/her] retirement benefit under Option B and to designate the Alternate Payee as the beneficiary for [XX%] of the Participant's available Option B death benefit. The designation of the Alternate Payee as the beneficiary shall be continued and maintained in full force and effect during [his/her] lifetime. The Participant will complete the WRB forms required to give effect to this paragraph.

In this paragraph, the Participant states his or her intent to elect the previously agreed upon option. Option C is used in this sample because it is frequently selected; Option C is the only option that provides a survivor (or continuation) benefit for the ex-spouse, provided that the ex-spouse has not remarried at the time of the Participant's actual retirement.

Please note that, by choosing Option C, the Participant will receive a benefit that is generally 9–11% less than an Option A or an Option B benefit. If this option and its limitations are not attractive to the parties, the parties should review the benefits and limitations of Options A and B. The options and potential death benefits are described in M.G.L. c. 32, §12.

If the Alternate Payee is to be named as the beneficiary under any option, the order should compel the Participant to designate the Alternate Payee as such on a form prescribed by the Board. **Naming the Alternate Payee as beneficiary in the Order does not meet the statutory requirement for designating a beneficiary.**

#### **8. ALLOCATION OF PARTICIPANT'S ANNUITY SAVINGS ACCOUNT REFUND, IF ANY**

In the event the Participant elects to receive a return of [his/her] accumulated contributions and interest prior to [his/her] retirement or death, the Alternate Payee's benefit shall equal [XX]% of the Participant's balance which had accrued as of [agreed upon date], commencing at the time the distribution is made to the Participant.

This paragraph allows the parties to award a portion of the member's annuity savings account to the Alternate Payee in the event that the Participant does not retire and elects to receive a return of his or her accumulated contributions and interest. While this paragraph is not mandatory, it does protect the interests of the Alternate Payee.

**If and when the Participant either applies for retirement benefits or requests a refund of his or her annuity savings account balance, the WRS will attempt to notify the Alternate Payee of the Participant's action. Accordingly, it is extremely important that the Alternate Payee keep the WRS informed of his or her current address.**

#### **9. PARTICIPANT'S INTENT TO DESIGNATE THE ALTERNATE PAYEE AS HIS OR HER BENEFICIARY OF ACTIVE SURVIVOR BENEFITS**

In the event that the Participant should die prior to retiring and receiving [his/her] retirement benefit, the Participant hereby designates the Alternate Payee as the beneficiary for a death benefit pursuant to M.G.L. Chapter 32, Section 12(2)(d), provided that the Alternate Payee is living and has not remarried at the time of the Participant's death. Such death benefit is to be payable to the Alternate Payee. The Participant and Alternate Payee acknowledge that if the Participant remarries, the surviving spouse may have a statutory right to elect a member-survivor allowance that will supersede the Alternate Payee's rights under this paragraph.

In the alternative, in the event the Alternate Payee becomes ineligible to receive the death benefit provided in Section 12(2)(d) by virtue of [his/her] remarriage, the Alternate Payee shall receive [XX]% of the Participant's contributions through [agreed upon date] together with the interest credited on such contributions through the date of the Participant's death. The Participant is further required to designate the Alternate Payee as the beneficiary on the prescribed form issued by the Worcester Retirement Board. The designation of the Alternate Payee as the beneficiary shall be continued and maintained in full force and effect during [his/her] lifetime, or until the commencement of benefit payments to both the Participant and the Alternate Payee upon the retirement of the Participant.

This paragraph allows the Participant to make provisions for the Alternate Payee in the event the Participant dies prior to retirement. The Alternate Payee is only eligible for the survivor (or continuation) benefit if he or she has not remarried at the time of the Participant's death. **The continuing survivor benefit cannot be apportioned between the Alternate Payee and another beneficiary.** This benefit is described in M.G.L. c. 32, §12(2)(d).

The parties are also allowed to designate the Alternate Payee as the lump-sum beneficiary pursuant to M.G.L. c. 32, §11(2)(c) in the event the Alternate Payee has remarried.

**IMPORTANT REMINDER:** In Massachusetts, if the member dies and is survived by a spouse (who meets the statutory requirements of M.G.L. c. 32, §12 (2)(d)) or dependent children, the surviving spouse and children have a superior right to the member's retirement plan benefits. This

means that even if the DRO and the Participant designate the Alternate Payee as the 12(2)(d) or 11(2)(c) beneficiary, if the Participant has remarried and his or her current spouse meets the statutory requirements of section 12(2)(d), his or her current spouse will have the statutory right to elect to receive this benefit.

**In effect, designation of the Alternate Payee as the 12(2)(d) member-survivor beneficiary or the 11(2)(c) lump-sum beneficiary will only be implemented if the Participant has not remarried at the time of the Participant's death.**

Again, if the Alternate Payee is to be named as the beneficiary under any option, the order should compel the Participant to designate the Alternate Payee as such on a form prescribed by the Board. **Naming the Alternate Payee as beneficiary in the Order does not meet the statutory requirement for designating a beneficiary.**

#### **10. ACTIONS NOT REQUIRED OF PLAN ADMINISTRATOR**

Nothing in this Order shall be construed to require the Retirement Plan or Plan Administrator:

- a. to provide to the Alternate Payee any type or form of benefit or any option not otherwise provided under the Retirement Plan;
- b. to provide to the Alternate Payee increased benefits (determined on the basis of actuarial equivalence stated in the Retirement Plan); or
- c. to pay any benefits to the Alternate Payee which are required to be paid to another alternate payee under another order previously determined to be a Domestic Relations Order sanctioned by the Supreme Judicial Court, *Contributory Retirement Board of Arlington v. Mangiacotti*, 406 Mass. 184 (1989).

#### **11. ALTERNATE PAYEE'S RIGHT TO COST OF LIVING ADJUSTMENTS, IF ANY**

The Alternate Payee shall be entitled to receive a pro rata share of any subsequent cost-of-living increases which may be granted on benefits which are in pay status.

This paragraph spells out how any future cost of living adjustments will be passed on to the parties. In the event that a specific dollar amount is specified as the Alternate Payee's Benefit, then we cannot change that amount and any COLAs will not be paid to the Alternate Payee.

#### **12. ALTERNATE PAYEE'S TAX LIABILITY**

The Alternate Payee shall include all of the taxable portion of [his/her] Alternate Payee Benefit, if and when received, in [his/her] gross taxable income. For purposes of sections 72 and 402(a)(9) of the Internal Revenue Code, the Alternate Payee shall be treated as the distributee of any distribution or payment made to said Alternate Payee under this Order. Said Alternate Payee's Benefit when paid, shall not be declared as taxable income or claimed as a deduction on the Participant's tax return. This paragraph identifies the tax benefits and burdens of the parties.

#### **13. INTENT OF DOMESTIC RELATIONS ORDER**

It is intended that this Order qualify as a *Domestic Relations Order* sanctioned by the Supreme Judicial Court, *Contributory Retirement Board of Arlington v. Mangiacotti*, 406 Mass. 184 (1989), and the provisions of this Order shall be interpreted and complied with in a manner consistent therewith.

**14. JURISDICTION AND MODIFICATION**

The Court retains jurisdiction over this matter to amend this Order to establish or maintain its status as a Domestic Relations Order sanctioned by the Supreme Judicial Court, *Contributory Retirement Board of Arlington v. Mangiacotti*, 406 Mass. 184 (1989), and pursuant to M.G.L. Chapter 32, Section 19, and in light of any subsequent legislation or appellate court ruling. In the event this Order is held not to be a Domestic Relations Order sanctioned by the Supreme Judicial Court, *Contributory Retirement Board of Arlington v. Mangiacotti*, 406 Mass. 184 (1989), the parties hereby agree to submit to and request the Probate Court to make it a Domestic Relations Order sanctioned by the Supreme Judicial Court, *Contributory Retirement Board of Arlington v. Mangiacotti*, 406 Mass. 184 (1989) in such a manner that will reflect the parties' intent as herein expressed and thereafter to enter an Order modifying the Domestic Relations Order entered by the Court, said modification Order to be entered *nunc pro tunc* if appropriate.

SO ORDERED

\_\_\_\_\_

Dated \_\_\_\_\_

Justice,  
Probate and Family Court Department  
[County] Division

## Appendix C

### Payments which cannot be ordered in a Qualified Domestic Relations Order

The following are examples of payments which the court **CANNOT** order the Board to include in a QDRO:

#### **Establish a separate account for the former spouse**

The SJC decided, in *Early v. State Board of Retirement*, that the ability of the Board to create accounts or award benefits within the system is limited to statutory authorization. The Board cannot expand the provision in G.L. c. 32, §1 which defines “member” to include non-employees for the purpose of establishing an account or distributing benefits to a nonmember. A Non-member’s rights to the retirement allowance are contingent upon the member’s rights if and when they are received.

#### **Make payments subject to the Retirement Equity Act or the Employee Retirement Income Security Act**

Governmental pension plans such as the one administered by the Worcester Retirement System are specifically exempt from the Retirement Equity Act and ERISA.

#### **Make payments to a former spouse before the member receives a retirement allowance or if the member does not receive a retirement allowance**

Since G.L. c. 32, §19 only allows assignment of a retirement allowance of a member, payment to the former spouse is contingent upon the member actually retiring and receiving a retirement allowance. If the member receives no allowance, no payment goes to the former spouse.

#### **Make payments to a former spouse of a member who dies before retirement if the member leaves a surviving spouse**

Under G.L. c. 32, §12(2)(d), if a member dies prior to retiring and has remarried, the surviving spouse will have the statutory right to elect to receive a death benefit, regardless of any prior designation made by the member, if the surviving spouse was living with the member or living apart for justifiable cause.

#### **Make payments of accidental death benefits to a former spouse of a member if the member leaves a surviving spouse**

Under G.L. c. 32, §9, accidental death benefits are paid to the surviving spouse of a member so long as the spouse survives and does not remarry. The member and surviving spouse must have been living together at the time of the member’s death or living apart for justifiable cause.

#### **Make payments to a former spouse under Option C if the former spouse has remarried at the time of the member’s retirement**

In order for a former spouse to be eligible for an assignment of the member’s retirement allowance under Option C, he or she may not remarry prior to the member’s retirement.

**Make payments to a former spouse from a member's annuity account**

G.L. c. 32, §10(4) authorizes a return of a member's deductions upon termination of service. Nothing in chapter 32 allows a distribution from the member's annuity account prior to termination or without a written request from the member on the proper form.